

46 Am. Jur. 2d Judges § 138

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

4. Bias or Prejudice as Grounds for Disqualification

b. Appearance of Bias and Partiality as Grounds for Disqualification

§ 138. Campaign contributions, support, or participation as grounds for judge's disqualification

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  45, 46, 49(1), 49(2)

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[Disqualification of judge because of political association or relation to attorney in case, 65 A.L.R.4th 73](#)

The Code of Judicial Conduct provides that a judge should disqualify him- or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including if the judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within the specified time period made aggregate contributions to the judge's campaign in an amount that is greater than the designated amount.¹ It has been found that, as an objective matter, recusal would be required in order to satisfy due process when a litigant donates to a judge's campaign for office.² However, not every campaign contribution by a litigant or attorney creates a probability of bias that requires a judge's recusal.³ For instance, a contribution not exceeding the legal limit for campaign contributions made by counsel to the campaign of a trial judge before whom counsel appears is a legally insufficient ground to justify recusal.⁴

In some instances, judges have not been disqualified from sitting in cases although the attorney for one of the parties has publicly supported the election of the judge and contributed to his or her campaign.⁵ Allegations that a party or a party's attorney provided commonplace forms of nonmonetary support or made unexceptional campaign contributions during a judge's election campaign

ordinarily are insufficient to require referring a recusal motion for reassignment to another judge.⁶ However, in other cases, a judge has been disqualified where the attorney for a party was the cochairperson of the judge's election campaign,⁷ or based upon other political relations between the attorney and the judge.⁸ Under some authority, the fact that an attorney worked on a judge's campaign prior to the filing of a lawsuit does not disqualify the judge on the basis of an appearance of impropriety,⁹ absent proof of bias or prejudice.¹⁰

Observation:

While in many cases a lawyer's role in a judicial campaign would clearly not raise any question as to the appearance of fairness, there can be such a relationship between a judge and a lawyer which requires disqualification. Thus, as to the situation of whether participation of a prosecuting attorney as a cochair of a judge's campaign would cause a judge's impartiality to be reasonably questioned in the appeal of a criminal case, the critical concern is determining whether the proceeding satisfies the appearance of fairness and how it would appear to a reasonably prudent and disinterested person. The answer necessarily depends on such considerations as the specific roles of the prosecuting attorney in the case at hand, the size of the county involved, or the presence of unusual circumstances such as extensive publicity surrounding the case at hand or controversy over the prosecutor's handling of certain cases.¹¹

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Footnotes

- 1 A.B.A. Code of Judicial Conduct, Canon 2, Rule 2:11(A)(4).
- 2 *State v. Sawyer*, 297 Kan. 902, 305 P.3d 608 (2013).
- 3 *Robinson Nursing and Rehabilitation Center, LLC v. Phillips*, 2016 Ark. 388, 502 S.W.3d 519 (2016).
- 4 *Keane v. Andrews*, 555 So. 2d 940 (Fla. 4th DCA 1990); *Jackson v. Jackson*, 732 So. 2d 916 (Miss. 1999); *Ivey v. Dist. Ct.*, 299 P.3d 354, 129 Nev. Adv. Op. No. 16 (Nev. 2013).
- 5 *Shepherdson v. Nigro*, 5 F. Supp. 2d 305 (E.D. Pa. 1998); *Public Citizen, Inc. v. Bomer*, 115 F. Supp. 2d 743 (W.D. Tex. 2000), *aff'd*, 274 F.3d 212 (5th Cir. 2001); *Cherradi v. Andrews*, 669 So. 2d 326 (Fla. 4th DCA 1996); *O'Brien v. State Bar of Nevada*, 114 Nev. 71, 952 P.2d 952 (1998).
- 6 *Post v. State*, 298 Ga. 241, 779 S.E.2d 624 (2015).
- 7 *Dell v. Dell*, 829 So. 2d 969 (Fla. 4th DCA 2002); *Reems v. St. Joseph's Hosp. and Health Center*, 536 N.W.2d 666 (N.D. 1995).
- 8 *Aetna Cas. and Sur. Co. v. Berry*, 669 So. 2d 56 (Miss. 1996) (overruled on other grounds by, *Owens v. Mississippi Farm Bureau Cas. Ins. Co.*, 910 So. 2d 1065 (Miss. 2005)).
As to a judge's political interests as disqualifying, generally, see § 110.
- 9 *Massongill v. County of Scott*, 337 Ark. 281, 991 S.W.2d 105 (1999); *Gluth Bros. Const., Inc. v. Union Nat. Bank*, 192 Ill. App. 3d 649, 139 Ill. Dec. 650, 548 N.E.2d 1364 (2d Dist. 1989).
- 10 *Massongill v. County of Scott*, 337 Ark. 281, 991 S.W.2d 105 (1999).
- 11 *State v. Carlson*, 66 Wash. App. 909, 833 P.2d 463 (Div. 1 1992).
A criminal defendant's allegation that the district attorney whose office was prosecuting him was serving as treasurer for the judge's election campaign presented a ground sufficient to potentially authorize an order requiring the judge's recusal, thus requiring the judge to refer the recusal motion for reassignment to

another judge who could then decide the recusal motion on its merits, after an evidentiary hearing or other development of the record. [Post v. State, 298 Ga. 241, 779 S.E.2d 624 \(2015\)](#).

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